

In Re: Duraisingam and ors.

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Court : Chennai

Decided On : Nov-09-1982

Reported in : 1983CriLJ1765

Judge : Natarajan and ;Swamikkannu, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 83 and 395(2)

Appeal No. : Referred Case No. 1 of 1982

Appellant : In Re: Duraisingam and ors.

Advocate for Pet/Ap. : N. Dinakar, Govt. Adv.

Judgement :

Natarajan, J.

1. A reference having been made by the II Additional District and Sessions Judge, Tirunelveli, under S. 395(2) of the Criminal P.C., the reference has been posted before us for orders.

2. Notice was given to the Public Prosecutor and he has been heard.

3. In S.C. No. 109 of 1978 there are ten accused persons. While the first accused is in custody, the others had been enlarged on bail. After examination of two witnesses for the prosecution, the second accused who was on bail absconded.

Subsequently he could not be traced and even after proclamation was made under S. 82, and attachment of immovable properties was effected under S. 83 of the Criminal P.C., he has not surrendered. In such circumstances, the learned Sessions Judge seeks clarification as to what is the procedure to be adopted by him. Apart from the outcome of the trial affecting the future of accused 1 and 3 to 10, the trial of a connected case in which all the accused in this case are prosecution witnesses is affected by the stoppage of trial in this case.

4. The learned Sessions Judge has stated that the case would not be governed by Rr. 16 and 17 read with R. 20 of the Criminal Rules of Practice as they relate to cases before Courts of Magistrates. Similarly, S. 299(1) of the Criminal P.C. may not be justifiably resorted to because in that case, it would affect the valuable right of cross-examination available to the second accused when the trial against him takes place. On account of these factors, the Additional Sessions Judge seems to be of the view that a peculiar situation has arisen and there is no guidance in the Criminal P.C. or in the Criminal Rules of Practice as to what is the further course of action he should take.

5. It is true that Rr. 16, 17 and 20 of the Criminal Rules of Practice would not govern the facts of this case. The question whether S. 299(1) of the Criminal P.C. should be resorted to does not arise for consideration because the learned Sessions Judge can exercise the powers conferred on him by sub-section (2) of S. 317 of the criminal P.C. Sub-section (2) of S. 317 gives power to every Judge and Magistrate to split up a case against an absconding accused if his personal attendance is necessary, but, notwithstanding that fact the accused has absconded and fails to participate in the enquiry or trial. The words 'if the accused in any such case is not represented by a pleader' occurring in sub-section (2) does not mean that merely because an absconding accused is represented by a pleader, the trial against him cannot be split up if his personal attendance in court is necessary. As the second accused has made himself scarce, the Additional Sessions Judge is instructed to deal with the matter in accordance with sub-section (2) of S. 317 of the Criminal P.C. The reference will stand answered accordingly.

6. Answered accordingly.

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